

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN McGUINTY,

08 CV 4822 (JAR)

Plaintiff,
-against-

ANSWER
WITH JURY DEMAND

BRIAN FEHD,

Defendant.

Defendant, by and through their attorney, Joan A. Reyes, of the law firm of MORRIS DUFFY ALONSO & FALEY, hereby answer the Complaint as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1.
2. Admit the allegations in Paragraph 2.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.
5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.
6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.
7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.
8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and

refer all matters of law to this Honorable Court.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Deny the allegation in paragraph 12 and refer all matters of law to this Honorable Court.

13. Deny the allegation in paragraph 13 and refer all matters of law to this Honorable Court.

14. Deny the allegation in paragraph 14 and refer all matters of law to this Honorable Court.

15. Deny the allegation in paragraph 15 and refer all matters of law to this Honorable Court.

16. Deny the allegation in paragraph 16 and refer all matters of law to this Honorable Court.

17. Deny the allegation in paragraph 17 and refer all matters of law to this Honorable Court.

AFFIRMATIVE DEFENSES

1. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of the plaintiff, pursuant to Section 14-A, CPLR.

2. The injuries and damages alleged, all of which are

denied by the defendants, were caused by the intervening, interceding and superseding acts of third parties not under the control of defendants.

3. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of third parties not under the control of defendants.

4. Pursuant to CPLR 4545(c), if it be determined or established that plaintiffs has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social Security Act), workers' compensation or employee benefit programs (except such collateral source entitled by law to liens against any recovery of the plaintiffs), then and in that event third party defendant hereby pleads in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiffs for such benefits for the two year period immediately preceding the accrual of this action and minus an amount equal to the projected future cost to the plaintiffs of

maintaining such benefits and as otherwise provided in CPLR 4545 (c) .

5. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of third parties not under the control of third party defendant.

6. The plaintiffs' sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

7. Plaintiffs have failed to mitigate his damages.

8. If the plaintiffs were not wearing seat belts at the time of the accident, defendants plead the failure to wear same, or to wear same properly, in mitigation of damages.

9. Defendants assert Section 15-108 of the General Obligations Law and will ask the Court that the defendants be entitled to a set-off for any settlements, releases or discontinuances.

June 26, 2008



JOAN A. REYES, ESQ.

Morris Duffy Alonso and Faley
2 Rector Street, 22nd Floor
New York, New York 10006
Our file: PRG 56362
(646) 536-5812

TO:

McCarthy & Kelly, L.P.
52 Duane Street, 7th Floor
New York, New York 10036

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

 Certification
By Attorney

certify that the within

 Attorney's
Affirmation

has been compared by me with the original and found to be a true and complete copy.

state that I am

the attorney(s) of record for

action; I have read the foregoing

in the within

and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

ss.:

The name signed must be printed beneath

I, **BRIAN FEHD**being duly sworn, depose and say: I am **A DEFENDANT** Individual
Verificationin the within action; I have read the foregoing **ANSWER**

and know the contents thereof; the same is true to my own knowledge, except

 Corporate
Verification

as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

of

corporation and a party in the within action; I have read the foregoing
and know the contents thereof; and the same is true to my own knowledge,except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This
verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

records and data maintained by deponent.



DANIEL J. MUELLER
Notary Public, State of New York XX
Qualified in New York County
No. 01MU6132221
Commission Expires August 22, 2009

BRIAN FEHD

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

(If more than one box is checked — indicate after names type of service used.)

I, _____ being sworn, say; I am not a party to the action, am over 18 years

of age and reside at _____

On

20 I served the within

 Service
By Mail

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

 Personal
Service on
Individualby delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as *a party therein*: Service By
Electronic
Means

by transmitting the papers by electronic means to the telephone number listed below, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received. I also deposited a true copy of the papers, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the attorney at the address set forth after the name:

 Overnight
Delivery
Serviceby depositing a true copy thereof, enclosed in a wrapper addressed as shown below, into the custody of
for overnight delivery, prior to the latest time designated by that service for overnight delivery.

Check applicable box

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN McGUIINTY,

08 CV 4822 (JAR)

Plaintiff,
-against-

ANSWER
WITH JURY DEMAND

BRIAN FEHD,

Defendant.

Defendant, by and through their attorney, Joan A. Reyes, of the law firm of MORRIS DUFFY ALONSO & FALEY, hereby answer the Complaint as follows:

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6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.
7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.
8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and

refer all matters of law to this Honorable Court.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Deny the allegation in paragraph 12 and refer all matters of law to this Honorable Court.

13. Deny the allegation in paragraph 13 and refer all matters of law to this Honorable Court.

14. Deny the allegation in paragraph 14 and refer all matters of law to this Honorable Court.

15. Deny the allegation in paragraph 15 and refer all matters of law to this Honorable Court.

16. Deny the allegation in paragraph 16 and refer all matters of law to this Honorable Court.

17. Deny the allegation in paragraph 17 and refer all matters of law to this Honorable Court.

AFFIRMATIVE DEFENSES

1. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of the plaintiff, pursuant to Section 14-A, CPLR.

2. The injuries and damages alleged, all of which are

denied by the defendants, were caused by the intervening, interceding and superseding acts of third parties not under the control of defendants.

3. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of third parties not under the control of defendants.

4. Pursuant to CPLR 4545(c), if it be determined or established that plaintiffs has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social Security Act), workers' compensation or employee benefit programs (except such collateral source entitled by law to liens against any recovery of the plaintiffs), then and in that event third party defendant hereby pleads in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiffs for such benefits for the two year period immediately preceding the accrual of this action and minus an amount equal to the projected future cost to the plaintiffs of

maintaining such benefits and as otherwise provided in CPLR 4545 (c) .

5. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of third parties not under the control of third party defendant.

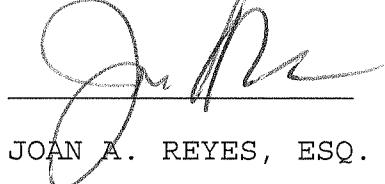
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8. If the plaintiffs were not wearing seat belts at the time of the accident, defendants plead the failure to wear same, or to wear same properly, in mitigation of damages.

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June 26, 2008



JOAN A. REYES, ESQ.

Morris Duffy Alonso and Faley
2 Rector Street, 22nd Floor
New York, New York 10006
Our file: PRG 56362
(646) 536-5812

TO:

McCarthy & Kelly, L.P.
52 Duane Street, 7th Floor
New York, New York 10036

STATE OF NEW YORK, COUNTY OF _____ ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

 Certification
By Attorney

certify that the within

 Attorney's
Affirmation

has been compared by me with the original and found to be a true and complete copy.

state that I am

the attorney(s) of record for

action; I have read the foregoing

in the within

and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF _____ ss.:

The name signed must be printed beneath

I, **BRIAN FEHD**being duly sworn, depose and say: I am **A DEFENDANT** Individual
Verificationin the within action; I have read the foregoing **ANSWER**

and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

 Corporate
Verification

the _____ of _____

a corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

records and data maintained by deponent.



DANIEL J. MUELLER
Notary Public, State of New York XX
Qualified in New York County
No. 01MU6132221
Commission Expires August 22, 2009

BRIAN FEHD

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF _____ ss.:

(If more than one box is checked — indicate after names type of service used.)

I,
of age and reside at

being sworn, say; I am not a party to the action, am over 18 years

On 20 I served the within

 Service
By Mail

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

 Personal
Service on
Individualby delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as *a party therein*: Service By
Electronic
Means

by transmitting the papers by electronic means to the telephone number listed below, which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received. I also deposited a true copy of the papers, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the attorney at the address set forth after the name:

 Overnight
Delivery
Service

by depositing a true copy thereof, enclosed in a wrapper addressed as shown below, into the custody of _____ for overnight delivery, prior to the latest time designated by that service for overnight delivery.

Check applicable box